

**United States District Court**  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JOSEPH KELLY DINGLER,  
#00149118

v.

ROCKWALL COUNTY SHERIFF  
et al.

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CIVIL ACTION NO. 3:19-CV-2819-S-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed. The Court reviewed the proposed Findings, Conclusions, and Recommendation for plain error. Finding none, the Court accepts the Findings, Conclusions, and Recommendation of the United States Magistrate.

Therefore, the petition for writ of habeas corpus is dismissed without prejudice as it does not present a cognizable basis for federal habeas relief. *See* Rule 4(b) of the RULES GOVERNING SECTION 2254 PROCEEDINGS.

Liberally construed as a civil rights action, the petition is dismissed as barred by the three-strike provision of 28 U.S.C. § 1915(g). Such dismissal is with prejudice to the refiling of an *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit with full payment of the \$400.00 filing fee.<sup>1</sup>

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), the Court denies a certificate of appealability insofar as it is

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<sup>1</sup> A \$50 administrative fee will be assessed in addition to the \$350 filing fee, resulting in a total filing fee of \$400 for a civil action in which the plaintiff has not been granted leave to proceed *in forma pauperis*.

necessary in this case. The Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>


If petitioner files a notice of appeal,

( ) petitioner may proceed *in forma pauperis* on appeal.

(X) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

**SO ORDERED.**

SIGNED March 11, 2020.



UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Rule 11 of the Rules Governing § 2254 Proceedings reads as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.